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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 110207102-2084-02]

RIN 0648-BA81

Endangered and Threatened Wildlife and Plants; Proposed Rulemaking to Revise Critical Habitat for Hawaiian Monk Seals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; notice of 6-month extension of the deadline for a final critical habitat determination.

SUMMARY: We, National Marine Fisheries Service (NMFS), published a proposed rule in the Federal Register on June 2, 2011, proposing to revise critical habitat for the Hawaiian monk seal under the Endangered Species Act (ESA) and requesting information related to the proposed action. This document announces a 6-month extension of the deadline for a final determination on the proposed rule. Based on comments received during the public comment period, we find that substantial disagreement exists regarding the sufficiency and accuracy of the data and analyses used to support the scope of the proposed critical habitat designation in the Main Hawaiian Islands. Accordingly, we are extending the deadline for the final revision to critical habitat for the Hawaiian monk seal an additional 6 months to further analyze data and consider concerns raised by State, Federal, and other entities, and better inform our

determinations for the final revision of Hawaiian monk seal critical habitat under the ESA.

DATES: A final revision will be made no later than December 2, 2012.

ADDRESSES: The proposed rule, maps, and other materials relating to this proposal can be found on the NFMS Pacific Island Region's website at [http://www.fpir.noaa.gov/PRD/prd\\_critical\\_habitat.html](http://www.fpir.noaa.gov/PRD/prd_critical_habitat.html).

FOR FURTHER INFORMATION CONTACT: Jean Higgins, NMFS, Pacific Islands Regional Office, (808) 944-2157; Lance Smith, NMFS, Pacific Islands Regional Office, (808) 944-2258; or Dwayne Meadows, NMFS, Office of Protected Resources (301) 427-8403.

#### SUPPLEMENTARY INFORMATION:

##### Background

On June 2, 2011, we published a proposed rule to revise critical habitat for the Hawaiian monk seal (*Monachus schauinslandi*) by extending the current designation in the Northwestern Hawaiian Islands (NWHI) out to the 500-meter (m) depth contour and including Sand Island at Midway Islands; and by designating six new areas in the main Hawaiian Islands (MHI), pursuant to section 4 of the Endangered Species Act (ESA) (76 FR 32044; June 2, 2011). We received public comments in response to the proposed rule from June 2, 2011 through January 6, 2012. Comments were received, through electronic submissions, letters and oral testimonies from public hearings held in Kaunakakai, Molokai; Kihei, Maui; Lihue, Kauai; Honolulu, Oahu; Hilo, Hawaii; and in Kailua Kona, Hawaii.

Several commenters, including the Hawaii Department of Land and Natural Resources; the Western Pacific Regional Fishery Management Council; the State of Hawaii's House Committee on Water, Land, and Ocean Resources; and the State of Hawaii's Senate Committee on Water, Land, and Housing, have strongly criticized the scope of the proposed critical habitat designation. In particular comments focused on the sufficiency of the analysis and the accuracy of the description of the six physical or biological features that are identified as essential for the conservation of the species, as well as whether the areas proposed are appropriate for designation. Additionally, comments suggested that our identification of essential features and the science upon which they are based, did not rely on the best available science to support the delineation of the proposed designation. We have considered these comments, and we find that substantial disagreement exists over the identification of the essential features that support the scope of the proposed designation of critical habitat in the Main Hawaiian Islands, and whether these features are essential for the conservation of the species.

#### Extension of Critical Habitat Revision Determination

The ESA, section 4(b)(6), requires that we take one of three actions within 1 year of a proposed revision to critical habitat: (1) finalize the proposed revision; (2) withdraw the proposed revision; or (3) extend the final revision to critical habitat by not more than 6 months. Section 4(b)(6)(B)(i) allows a 6-month extension of the 1-year deadline for a final revision if there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the revision for the purposes of soliciting additional data.

We have received multiple comments on the scope of the designation and the sufficiency or accuracy of the available data used to support this proposed rulemaking.

In particular, commenters raised questions regarding the foraging ecology of Hawaiian monk seals in the main Hawaiian Islands and whether the areas proposed for designation address the foraging needs and preferences in this habitat. The State of Hawaii's Department of Land and Natural Resources submitted a comment disagreeing with the identified physical and biological features and describing an alternative approach for considering foraging areas for this designation. We are presently working with the State to obtain further information regarding the data and analysis they used to support their evaluation of foraging areas. Additionally, the Western Pacific Regional Fishery Management Council submitted a comment disagreeing with the delineation of areas used by monk seals for foraging in the main Hawaiian Islands. NMFS has released just over 20 GPS-equipped cellular transmitter tags on seals in the main Hawaiian Islands in the past two years; we believe that further analysis of this data will provide additional information bearing on this dispute and may be sufficient to resolve it.

As a result of these comments, NMFS is extending the final revision to critical habitat for 6 months pursuant to section 4(b)(6)(B)(i). An additional 6 months will allow us to further evaluate the data used by the State, as well as analyze information received from GPS-equipped cellular transmitter tags in the main Hawaiian Islands. To ensure that the final rule is based solely on the best available scientific information, it is essential to resolve the substantial disagreement regarding the identification and analysis of the essential features which support the scope of the designation; therefore, we conclude that a 6-month extension of the final revision to critical habitat for the Hawaiian monk seal is warranted.

Although not a basis for the extension, we will also use this period to further evaluate all comments received regarding the potential economic impacts of the proposed designation.

In consideration of the disagreement surrounding the scope of this proposed designation, we extend the timeline for the final designation for an additional 6 months (until December 2, 2012) to resolve the disagreement.

#### Classification

#### Regulatory Planning and Review (E.O. 12866)

This notice has been determined to be not significant for purposes of E.O. 12866. A draft Economic Analysis report and draft ESA section 4(b)(2) report (NMFS, 2010b) were prepared to support the exclusion process under section 4(b)(2) of the ESA and our consideration of alternatives to this rulemaking as required under E.O. 12866. The draft Economic Analysis report (ECONorthwest, 2010) and draft ESA section 4(b)(2) report (NMFS, 2010b) are available on the Pacific Islands Region Web site at [http://www.fpir.noaa.gov/PRD/prd\\_critical\\_habitat.html](http://www.fpir.noaa.gov/PRD/prd_critical_habitat.html).

Authority: 16 U.S.C. 1531 et seq.

Dated: June 19, 2012.

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Samuel D. Rauch III,  
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National Marine Fisheries Service.

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